

REMARKS

In the office action claims 1-42 are pending. Claims 1-26 and 39-42 were allowed, and claims 28 and 35-37 were indicated to be allowable if rewritten in independent form incorporating the base claim and any intervening claims. Claims 27, 29, 30-34 and 38 stand rejected. Claim 27 has been amended in this response. Reconsideration of the present application as amended and in view of the remarks that follow is respectfully requested.

Claims 27, 29, 30-32, 34 and 38 were rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,540,696 to Booth, Jr. et al. (Booth.) Claim 33, depending from claim 27, was rejected under 35 USC §103(a) as being unpatentable over Booth in view of U.S. Patent No. 4,034,746 to Williams.

Booth discloses a tensioner having a ratchet shaft 56 with ratchet teeth 60 extending along an axis. As shown in Figs. 17-19, release 52 includes a shaft 62 that extends perpendicular to ratchet shaft 56 between a pawl 50 and a knob 64. Spring 54 biases the pawl perpendicularly to ratchet shaft 56 into engagement with ratchet teeth 60. To release pawl 50 from teeth 60, release knob 64 is rotated to translate shaft 56 and pawl 50 away from ratchet shaft 56 in a direction that is perpendicular to ratchet shaft 56.

In contrast, amended claim 27 is directed to a device for applying a force to a spinal column segment comprising:

a body having a first end member, said body defining a passage therethrough and a chamber in communication with said passage;

a rack moveably received in said passage, said rack having a second end member opposite said first end member;

a driving mechanism in operative engagement with said rack to move said first and second end members in an extend direction for application of a distraction force and in a retract direction for application of a compression force; and

a lock member positioned in said chamber of said body, said lock member having a lock pin engaged thereto moveable generally parallel to said rack to move said lock member between a first position wherein said lock member engages said rack and a second position wherein said lock member is not engaged with said rack.

As discussed above, Booth disclose a release 52 that is moved perpendicularly away from ratchet shaft 56 to disengage pawl 50 therefrom. Accordingly, Booth fails to disclose claim 27, and withdrawal of the rejection of the same is respectfully requested.

Claims 29, 30-34 and 38 depend directly or indirectly from claim 27, and are allowable at least because claim 27 is allowable and also for the reasons provided above. Accordingly, withdrawal of the rejection of claims 27, 29-34 and 38 under 35 USC §102(b) and 35 USC §103(a) in view of Booth is respectfully requested.

In view of the above, claims 1-42 are in condition for allowance. A Notice of Allowance for the present application is respectfully requested. The Examiner is welcome to contact the undersigned to resolve any outstanding issues with regard to the present application.

Respectfully submitted

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Page 12 of 12